



RULE-MAKING ORDER

CR-103 (June 2004)
(Implements RCW 34.05.360)

Agency: Employment Security Department

☒ **Permanent Rule**
☐ **Emergency Rule**

Effective date of rule:

Permanent Rules

- ☐ 31 days after filing.
☒ Other (specify) Jan. 1, 2008 EXCEPT WACs 192-300-170, 192-310-150, 192-310-160, and 192-310-170 which are effective January 1, 2009.

Effective date of rule:

Emergency Rules

- ☐ Immediately upon filing.
☐ Later (specify) _____

Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?
☐ Yes ☒ No If Yes, explain:

Purpose: The rules implement 2007 legislation concerning tax rates for new employers, reporting requirements, penalties, corporate officers, exempting payments by certain small performing arts industries, requiring notification by religious organizations to their employees, and required employer notices. This filing also incorporates new and amended rules that clarify existing policy or convert policies to rules.

Citation of existing rules affected by this order:

Repealed:

Amended: WAC 192-100-500, 192-300-170, 192-310-010, 192-310-020, 192-310-030, 192-310-035, 192-310-040, 192-310-100, 192-320-020, 192-320-070, 192-330-100, and 192-340-010

Suspended:

Statutory authority for adoption: RCW 50.12.010 and RCW 50.12.040

Other authority :

PERMANENT RULE ONLY (Including Expedited Rule Making)

Adopted under notice filed as WSR 07-20-124 on October 3, 2007 (date).

Describe any changes other than editing from proposed to adopted version: None.

If a preliminary cost-benefit analysis was prepared under RCW 34.05.328, a final cost-benefit analysis is available by contacting:

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EMERGENCY RULE ONLY

Under RCW 34.05.350 the agency for good cause finds:

- ☐ That immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.
☐ That state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this finding:

Date adopted: November 20, 2007

NAME (TYPE OR PRINT)
Paul Trause

SIGNATURE

TITLE
Deputy Commissioner

CODE REVISER USE ONLY

1132
07-23-107

(COMPLETE REVERSE SIDE)

**Note: If any category is left blank, it will be calculated as zero.
No descriptive text.**

**Count by whole WAC sections only, from the WAC number through the history note.
A section may be counted in more than one category.**

The number of sections adopted in order to comply with:

Federal statute:	New	_____	Amended	_____	Repealed	_____
Federal rules or standards:	New	_____	Amended	_____	Repealed	_____
Recently enacted state statutes:	New	<u>8</u>	Amended	<u>7</u>	Repealed	_____

The number of sections adopted at the request of a nongovernmental entity:

New	_____	Amended	_____	Repealed	_____
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The number of sections adopted in the agency's own initiative:

New	<u>9</u>	Amended	<u>5</u>	Repealed	_____
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The number of sections adopted in order to clarify, streamline, or reform agency procedures:

New	<u>9</u>	Amended	<u>5</u>	Repealed	_____
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The number of sections adopted using:

Negotiated rule making:	New	_____	Amended	_____	Repealed	_____
Pilot rule making:	New	_____	Amended	_____	Repealed	_____
Other alternative rule making:	New	<u>17</u>	Amended	<u>12</u>	Repealed	_____

AMENDATORY SECTION (Amending WSR 99-20-125, filed 10/6/99, effective 11/6/99)

WAC 192-100-500 General definitions--Relating to wages and taxes. For purposes of unemployment insurance taxes only:

(1) **Wages.** Includes all payments for personal services performed by an employee for an employer including the cash value of all remuneration paid in any medium other than cash including salaries, commissions, vacation pay, dismissal wages, bonuses and reasonable value of board, rent, housing, lodging, payments in kind, tips, and any other similar advantage received from the individual's employer or directly with respect to work for the employer.

(2) **Wages paid.** Includes wages that are actually received by an individual and wages that are contractually due but are not paid because the employer refuses or is unable to make such payment. (See RCW 50.24.015).

(3) **Wages constructively paid.** Those wages set aside, by mutual agreement of both parties (employer and employee) to be paid at a later date. They are reported for tax purposes when actually paid to the employee. The wages set aside can have no substantial limitation or restriction as to the time or manner or condition upon which payment is to be made. In addition the ability to draw on the wages must be within the control and disposition of the employee.

(4) **Deductions.** The amount(s) any federal or state law requires an employer to deduct from the wages of an individual in its employ; and to pay the amount deducted to the federal or state government, or any of their political subdivisions. The amount deducted will be considered wages and to have been paid to the individual at the time of the deduction. Other amounts deducted from the wages of an individual by an employer also constitute wages paid to the individual at the time of the deduction.

(5) **Nominal stipends.** A stipend is considered nominal when it does not exceed six hundred dollars per year.

(6) **Contributions.** Title 50 RCW generally uses the term "contributions" to refer to unemployment taxes. Title 192 WAC generally uses the term "unemployment taxes" to refer to contributions. The two terms are treated interchangeably unless the context provides otherwise.

NEW SECTION

WAC 192-140-220 What happens if I do not respond to a request for information about my corporate officer status? If you do not respond to a request for information about your corporate officer status, the department will presume you are not unemployed as defined in RCW 50.04.310 and benefits will be denied under RCW 50.20.010. This denial is for an indefinite period of time and will continue until you show you are unemployed as defined under RCW 50.04.310.

NEW SECTION

WAC 192-300-010 What documentation and liability requirements apply to employer representatives? (1) In order to represent an employer before the department, a representative from a third party must file with the department a power of attorney in a form acceptable to the department. The department may accept a signed power of attorney form by fax or in other electronic form. The department will send a letter to the employer confirming that the employer has authorized the employer representative to represent it before the department.

(2) The employer remains liable for the payments of any taxes, interest, or penalties due if its third party representative errs in registering, filing reports, or paying unemployment taxes.

NEW SECTION

WAC 192-300-060 What are reimbursable employers? (1) Some nonprofit organizations, states and political subdivisions of the state, and Indian tribes may qualify under chapters 50.44 and 50.50 RCW as reimbursable employers which reimburse the department for unemployment benefits actually paid to separated employees instead of paying unemployment taxes.

(2) In order to qualify, a nonprofit organization must be a section 501(c)(3) tax-exempt organization under the federal tax code and must provide the department with a copy of its section 501(c)(3) letter.

(3) If a new employer chooses and qualifies for the reimbursable method, the department may require it to post a bond or security deposit under RCW 50.44.070. Political subdivisions and nonprofit hospitals, colleges, and universities are not required to post a bond or security deposit. For a new employer, the department will base the amount of any required bond on the projected taxable payroll for the coming year, multiplied by the industry average tax rate, with the result rounded down.

(4) For an existing reimbursable employer, the department will base the amount of any required bond based on individual wages of each employee for the previous four complete calendar quarters, multiplied by new taxable wage amounts using the maximum taxable wage base assigned for the coming year, with the result rounded down.

(5) If a reimbursable employer switches to the taxable method, the employer will be assigned the industry average rate until it

satisfies the requirements to become a "qualified employer" under RCW 50.29.010. This does not apply to delinquent employers under WAC 192-330-110.

AMENDATORY SECTION (Amending WSR 00-05-064, filed 2/15/00, effective 3/17/00)

WAC 192-300-170 Requirements for election of unemployment insurance coverage. The department ~~((has to make timely and accurate employer liability determinations and unemployment insurance payments. It is under))~~ applies RCW 50.04.165 and 50.24.160 ~~((that we))~~ to establish the election of coverage for unemployment insurance by employers where personal services are not considered employment under the law:

(1) RCW 50.24.160 allows any business to ~~((file a))~~ request ~~((for election of))~~ unemployment insurance coverage for personal services that are not covered as employment:

- (a) The request must be in writing to the department;
- (b) The department must approve the request for election of coverage in writing; and
- (c) The request must be signed by someone legally authorized to bind the business.

(2) ~~((RCW 50.04.165 allows a corporate employer to elect to cover the personal services of its corporate officers for unemployment insurance coverage.~~

~~((a) A corporate employer must submit a written request for voluntary coverage signed by a person authorized to legally bind the corporation. The department must receive this request no later than thirty days prior to the end of the quarter in which the change is to begin;~~

~~((b) "Corporate officer" is defined in RCW 23A.08.470;~~

~~((c) Corporate officers appointed under RCW 23B.08.400, other than those covered by Chapter 50.44, are not considered services in employment unless the corporation elects coverage of all its corporate officers under RCW 50.04.165;~~

~~((d) All services of corporate officers are considered exempt until the effective date of approval of election of coverage by the department; and~~

~~((e) Corporate officers are exempt under RCW 50.04.165 only if the employer has notified them in writing that they are ineligible for unemployment insurance benefits. The exemption becomes effective with the date of the written notice. The written notice must:~~

- ~~((i) Have the name(s) of the officer(s) who is/are being exempted;~~
- ~~((ii) Have the effective date of the exemption;~~
- ~~((iii) Have a signature of the officer(s) acknowledging receipt of the request;~~

~~(iv) Be kept on file by the corporation; and~~
~~(v) Be available for review by any department official upon request.~~

~~(3) If an agricultural corporate employer voluntarily covers its officers, the wages or salaries paid for such services will be used to determine the employer liability of the agricultural employer. Wages or salaries paid for service of corporate officers exempt under RCW 50.04.165 will not be used to determine liability of agricultural employers.~~

~~(4)) All changes in elected coverage remain in effect for at least two calendar years. The business may terminate coverage only at the end of a calendar year. ((A written request by the employer must be sent to the department by January 15th following the end of the last calendar year of desired coverage.)) To terminate coverage, the employer must send a written request to the department by January 15.~~

~~((+5)) (3) The department reserves the right to disapprove ((an election for unemployment insurance)) a request for coverage ((due to)) because:~~

~~(a) The applicant ((being nonliable)) is not liable for federal unemployment taxes (FUTA); ((or))~~

~~(b) The ((seasonal nature of the)) occupation or industry is seasonal; or~~

~~(c) Other reasons apply.~~

~~((+6)) (4) The department reserves the right to cancel unemployment insurance coverage for a voluntary election employer because:~~

~~(a) Of nonpayment of unemployment insurance taxes ((, and/)) or failure to file an unemployment insurance tax ((/)) and wage report; ((or))~~

~~(b) Of misrepresentation of facts; ((or))~~

~~(c) Coverage is not used for involuntary unemployment as outlined in RCW 50.01.010; or~~

~~(d) Other reasons apply.~~

NEW SECTION

WAC 192-300-185 Branch accounts. The department may establish branch accounts for a single registered employer. All branch accounts shall be consolidated for purposes of establishing a single tax rate for the employer.

AMENDATORY SECTION

WAC 192-310-020 Tax payments by employers((--)) (RCW 50.24.010). (1) Taxes must be paid each quarter. Each quarterly payment must include the taxes owed on all wages paid during that calendar quarter. Payments are due to the department by the last day of the month following the end of the calendar quarter for which taxes are due. Payments made by mail are considered paid on the postmarked date. If the last day of the month falls on a Saturday, Sunday, or a legal holiday, the tax payment must be received or postmarked on the next business day.

(2) Tax payments are due immediately when an employer goes out of business or the account is closed by the department. Taxes not paid immediately are delinquent. However, interest will not be added until the first day of the second month following the end of the calendar quarter for which the taxes are owed.

*Code Reviser -
Note previous
change to this
WAC on 11-1-07.*

AMENDATORY SECTION (Amending WSR 05-19-017, filed 9/9/05, effective 10/10/05)

WAC 192-310-010 What reports are required from an employer? ~~((--))~~ (RCW 50.12.070.) (1) Master business application.

Every person or unit with one or more individuals performing services for it in the state of Washington must file a master business application with the department of licensing. ~~((The application must be in a format approved by the commissioner.))~~

(2) Employer registration:

(a) Every employer shall register with the department and obtain an employment security account number. Registration shall include the names, Social Security numbers, mailing addresses, telephone numbers, and the effective dates in that role of natural persons who are spouses of owners and owners, partners, members, or corporate officers of an employer. Registration of corporations shall include the percentage of stock ownership for each corporate officer, delineated as zero percent, less than ten percent, or ten percent or more, and the family relationship of corporate officers to other corporate officers who own ten percent or more. Every employer shall report changes in owners, partners, members, corporate officers, and percentage of ownership of the outstanding stock of the corporation by corporate officers. The report of changes is due each calendar quarter at the same time that the quarterly tax and wage report is due.

(b) A nonprofit corporation that is an employer shall register with the department, but is not required to provide names, Social Security numbers, mailing addresses, or telephone numbers for corporate officers who receive no compensation from the nonprofit corporation with respect to their services for the nonprofit corporation.

(c) For purposes of this subsection:

(i) "Owner" means the owner of an employer operated as a sole proprietorship;

(ii) "Partner" means a general partner of an employer organized as a partnership, other than limited partners of a limited partnership who are not also general partners of the partnership;

(iii) "Member" means a member of an employer organized as a limited liability company, other than members who, pursuant to applicable law or the terms of the limited liability company's operating agreement or other governing documents, have no right to participate in the management of the limited liability company; and

(iv) "Corporate officer" means an officer described in the bylaws or appointed or elected by the board of directors in accordance with the bylaws or articles or certificates of incorporation of an employer organized as a for-profit or nonprofit

corporation.

(3) Quarterly tax and wage reports:

(a) Tax report. Each calendar quarter, every employer must file a tax report with the commissioner. The report must list the total wages paid to every employee during that quarter.

(b) Report of employees' wages. Each calendar quarter, every employer must file a report of employees' wages with the commissioner. This report must list each employee by full name, Social Security number, and total hours worked and wages paid during that quarter.

(i) Social Security numbers are required for persons working in the United States;

(ii) If an individual has a Social Security card, he or she must present the card to the employer at the time of hire or shortly after that. This does not apply to agricultural workers who, under federal rules, may show their Social Security card on the first day they are paid;

(iii) If the individual does not have a Social Security card, Internal Revenue Service rules allow an employer to hire the individual with the clear understanding that the individual will apply for a Social Security number within seven calendar days of starting work for the employer. The individual must give the employer a document showing he or she has applied for a Social Security card. When the card is received, the individual must give the employer a copy of the card itself. An employer should keep copies of the document(s) for his or her records; and

(iv) If the employee does not show his or her Social Security card or application for a card within seven days and the employer continues to employ the worker, the employer does not meet the reporting requirements of this section. The department will not allow waiver of the incomplete report penalty (see WAC 192-310-030).

(c) Format. Employers must file the quarterly tax and wage reports in one of the following formats:

(i) Electronically, using the current version of UIFastTax, UIWebTax, or ICESA Washington; or

(ii) Paper forms supplied by the department (or an approved version of those forms). Agency forms include "drop-out ink" that cannot be copied. Therefore, photocopies are considered incorrectly formatted reports and forms.

(d) Due dates. The quarterly tax and wage reports are due by the last day of the month following the end of the calendar quarter being reported. Calendar quarters end on March 31, June 30, September 30 and December 31 of each year. So, reports are due by April 30, July 31, October 31, and January 31, in that order. If these dates fall on a Saturday, Sunday, or a legal holiday, the reports will be due on the next business day. Reports submitted by mail will be considered filed on the postmarked date. The commissioner must approve exceptions to the time and method of filing in advance.

(e) Termination of business. Each employer who stops doing business or whose account is closed by the department must

immediately file:

(i) A tax report for the current calendar quarter which covers tax payments due on the date the account is closed; and

(ii) A report of employees' wages for the current calendar quarter which includes all wages paid as of the date the account is closed.

AMENDATORY SECTION (Amending WSR 05-19-017, filed 9/9/05, effective 10/10/05)

WAC 192-310-030 What are the report and tax payment penalties? (RCW 50.12.220.) (1) **Penalty for late tax reports.** An employer who does not file a tax report within the time frame required by WAC 192-310-010 (~~((2)(c))~~) (3)(d) must pay a penalty of twenty-five dollars for each violation, unless the penalty is waived by the department.

(2) **Definition of incomplete or incorrect format tax report.** An employer must file a tax report that is complete and in the format required by the commissioner.

(a) An "incomplete report" is any report filed by any employer or their agent where:

(i) The entire wage report is not filed on time; or
(ii) A required element is not reported (Social Security number, name, hours worked, or wages paid); or

(iii) A significant number of employees are not reported; or
(iv) A significant number of any given element is not reported, for example, missing Social Security numbers, names, hours, or wages; or

(v) Either the employer reference number or Unified Business Identifier (UBI) number is not included with the tax or wage report; or

(vi) The report includes duplicate Social Security numbers, or impossible Social Security numbers as shown by the Social Security Administration (such as 999-99-9991, 999-99-9992, etc.).

(b) An "incorrect format" means any report that is not filed in the format required by the commissioner under WAC 192-310-010 (~~((2))~~) (3)(c). Agency forms include "drop-out ink" that cannot be copied. Therefore, photocopies are considered incorrectly formatted reports and forms.

(c) For purposes of this section, the term "significant" means an employer who has:

(i) One employee and reports incomplete wage elements for the one employee; or

(ii) Two to (~~((19))~~) nineteen employees and reports incomplete wage ((records)) elements for two or more employees; or

(~~((iii))~~) (iii) Twenty to (~~((49))~~) forty-nine employees and reports incomplete wage ((records)) elements for three or more employees; or

~~((iii))~~ (iv) Fifty or more employees and reports incomplete wage ~~((records))~~ elements for four or more employees.

(3) **Penalty for filing an incomplete or incorrect format tax report.** An employer who files an incomplete or incorrectly formatted tax and wage report will receive a warning letter for the first occurrence. For subsequent occurrences of either an incomplete or incorrectly formatted report within five years of the date of the last occurrence (whether or not the last occurrence was before the effective date of this amendatory section), the employer must pay a penalty as follows:

(a) ~~((Two hundred fifty dollars or))~~ When quarterly tax is due and an employer has submitted an incomplete report or filed the report in an incorrect format, the following schedule will apply after the initial warning letter: Ten percent of the quarterly contributions for each occurrence, ((whichever is less.)) up to a maximum of \$250.00, but not less than:

(i)	<u>2nd occurrence</u>	<u>\$75.00</u>
(ii)	<u>3rd occurrence</u>	<u>\$150.00</u>
(iii)	<u>4th and subsequent occurrences</u>	<u>\$250.00</u>

(b) When no quarterly tax is due and an employer has submitted an incomplete report or filed the report in an incorrect format, the following schedule will apply after the initial warning letter:

(i)	((1st)) <u>2nd occurrence</u>	<u>\$75.00</u>
(ii)	((2nd)) <u>3rd occurrence</u>	<u>\$150.00</u>
(iii)	((3rd)) <u>4th and subsequent occurrences</u>	<u>\$250.00</u>

(c) After five years without an occurrence, prior occurrences will not count and the employer shall receive a warning letter instead of a penalty on the next occurrence.

(4) **Penalty for knowingly misrepresenting amount of payroll.** If an employer knowingly (on purpose) misrepresents to the department the amount of his or her payroll that is subject to unemployment taxes, the penalty is up to ten times, in the discretion of the department, the difference between the taxes paid, if any, and the amount of taxes the employer should have paid for the period. This penalty is in addition to the amount the employer should have paid. The employer must also pay the department for the reasonable expenses of auditing his or her books and collecting taxes and penalties due as provided in WAC 192-340-100.

(5) **Late tax payments.** All employers must file a tax report every quarter, including employers who have no payroll for a given quarter. If an employer does not report on time, it will be charged a late fee of \$25.00 for each report. If the payment is late, the employer will be charged interest at a rate of one percent of taxes due per month. A late payment penalty is also charged for overdue taxes:

(a) First month: Five percent of the total taxes due or \$10.00, whichever is greater;

(b) Second month: An additional five percent of total taxes due or \$10.00, whichever is greater; and

(c) Third month: An additional ((10)) ten percent of total taxes due or \$10.00, whichever is greater((, and

~~(d) Fourth month and every month following for the life of the delinquent debt. A total of 20 percent of total taxes due or \$10.00, whichever is greater)).~~

(6) **Waivers of late filing and late payment penalties.** The department may, for good cause, waive penalties for late filing of a report and late payment of taxes that are due with a report. The commissioner must decide if the failure to file reports or pay taxes on time was not the employer's fault.

(a) The department may waive late penalties when there are circumstances beyond the control of the employer. These circumstances include, but may not be limited to, the following:

(i) The return was filed on time with payment but inadvertently mailed to another agency;

(ii) The delinquency was caused by an employee of the department, such as providing incorrect information to the employer, when the source can be identified;

(iii) The delinquency was caused by the death or serious illness, before the filing deadline, of the employer, a member of the employer's immediate family, the employer's accountant, or a member of the accountant's immediate family;

(iv) The delinquency was caused by the unavoidable absence of the employer or key employee before the filing deadline. "Unavoidable absence" does not include absences because of business trips, vacations, personnel turnover, or terminations;

(v) The delinquency was caused by the accidental destruction of the employer's place of business or business records;

(vi) The delinquency was caused by fraud, embezzlement, theft, or conversion by the employer's employee or other persons contracted with the employer, which the employer could not immediately detect or prevent. The employer must have had reasonable safeguards or internal controls in place; or

(vii) The employer, before the filing deadline, requested proper forms from the department's central office or a district tax office, and the forms were not supplied in enough time to allow the completed report to be filed and paid before the due date. The request must have been timely, which means at least three days before the filing deadline.

(b) The department may waive late penalties if it finds the employer to be out of compliance during an employer-requested audit, but the department decides the employer made a good faith effort to comply with all applicable laws and rules; and

(c) The department will not waive late penalties if the employer has been late with filing or with payment in any of the last eight consecutive quarters immediately preceding the quarter for which a waiver is requested. If an employer has been in business for fewer than the eight preceding quarters, then all preceding quarters must have been filed and paid on time and a one-time only waiver may be granted.

(7) **Incomplete reports or incorrect format penalty waivers.** For good cause, the department may waive penalties or not count occurrences for incomplete reports or reports in an incorrect format (~~((one time only))~~) when the employer can demonstrate (~~((making a good faith attempt to correct the problem in a timely manner after the department notified the employer of the problem))~~) that the incomplete or incorrectly formatted report was not due to the fault of the employer.

(8) **Missing and impossible Social Security numbers.** When a Social Security number is impossible or missing, the department may waive penalties for incomplete reports only once for each worker and only when:

(a) The report was incomplete because it included impossible Social Security numbers, but the employer can show that the impossible Social Security numbers were provided to the employer by the employees; or

(b) The report was incomplete because of missing Social Security numbers, but the employer can show that the employee did not work for the employer after failing to provide a valid Social Security card or application for Social Security number within seven days of employment.

(9) **Penalty waiver requests.**

(a) An employer must request a waiver of penalties in writing, include all relevant facts, attach available proof, and file the request with a tax office. In all cases the burden of proving the facts is on the employer.

(b) At its discretion, the department may waive penalties on its own motion without requiring a request from the employer if it finds that the penalty was caused by the department's own error or for other good cause.

(10) **Extensions.** The department, for good cause, may extend the due date for filing a report. If granted, the employer must make a deposit with the department in an amount equal to the estimated tax due for the reporting period or periods. This deposit will be applied to the employer's debt. The amount of the deposit must be approved by the department.

AMENDATORY SECTION (Amending WSR 99-20-134, filed 10/6/99, effective 11/6/99)

WAC 192-310-035 Employer reports--Failure to report or incorrectly reporting hours or wages. (1) If an employer (~~((fails to))~~) does not report hours worked and a former employee (~~((files))~~) applies for benefits, the (~~((benefits will be based on the amount of hours calculated by using))~~) department will divide the wages earned by the state's minimum wage (RCW 49.46.020) in effect at the time to estimate the hours worked.

(2) If the employer (~~((subsequently produces))~~) later provides

the actual hours worked, the department will recalculate the former employee's claim ~~((will be recalculated))~~.

(3) ~~((in the event))~~ If the claim is voided ~~((7))~~ or benefits are reduced as a result of the recalculation, ~~((the original claim amount will not be considered as an overpayment against))~~ the claimant will not be required to repay any benefits that were overpaid and WAC 192-220-070 will apply.

(4) The employer will be charged under WAC 192-320-080 for benefits paid.

AMENDATORY SECTION (Amending WSR 99-20-141, filed 10/6/99, effective 11/6/99)

WAC 192-310-040 Employer reports--Further defining hours worked ~~((--))~~ (RCW 50.12.070). This section defines the hours that ~~((should be included on the employer's))~~ employers must include on the quarterly tax and wage report.

(1) **Vacation pay.** ~~((The employer will))~~ Report the number of hours an employee is on paid leave ~~((with pay))~~. ~~((Cash))~~ Do not report payments made in place of vacation time ~~((will not be counted))~~ as hours worked.

(2) **Sick leave pay.** ~~((In accordance with))~~ As provided in RCW 50.04.330(1), any ~~((amount of))~~ payments made to ~~((the))~~ an employee ~~((covered))~~ under a qualified plan ~~((regarding))~~ for sickness or accident disability, insurance or annuities, medical or hospitalization expenses in connection with sickness or accident disability, death or retirement are not considered ~~((to be))~~ wages or compensation. ~~((Neither hours nor wages are reportable.))~~ Do not report these as hours or wages. For payments under a nonqualified plan, ((the)) report both wages and hours ~~((are reportable))~~.

(3) **Overtime.** ~~((The employer will))~~ Report the number of hours actually worked for which overtime pay or compensatory time is provided, without regard to the amount of wages or compensation paid.

(4) **Commissioned or piecework employees.** ~~((An employer will))~~ Report the actual number of hours worked by employees paid by commission or by piecework. ~~((In the absence of))~~ If there are no reliable time keeping records, ((the employer will)) report a full-time commissioned or piecework employee for 40 hours worked for each week in which any of their duties were performed.

(5) **Wages in lieu of notice.** When an employee is paid wages in lieu of notice of termination, ~~((the employer will))~~ report the actual number of hours ~~((that would have been))~~ for which they were ~~((compensated))~~ paid. Wages in lieu of notice ~~((compensates))~~ of termination pays the employee ~~((upon termination of service))~~ whose services have been terminated by the employer for the amount of wages they would have earned during the ~~((specified))~~ notice

period.

(6) **Employees on salary.** If a salaried employee works other than the regular 40-hour week, ~~((the employer will))~~ report the actual number of hours worked. ~~((In the absence of a))~~ If there are no reliable time keeping records, ~~((the employer will))~~ report 40 hours for each week in which a full-time salaried employee ~~((for 40 hours each week they))~~ worked.

(7) **Faculty employees.** Faculty members of community and technical colleges must teach at least 15 classroom or laboratory hours to be considered full-time. A teaching load of less than 15 hours of instruction is considered part-time.

~~((i))~~ ~~In the absence of~~ (a) If there is no reliable hourly information, ~~((an employer will))~~ report the hours of instruction as part-time ~~((using))~~ based on 15 credits as a full-time teaching load and 35 hours as ~~((the base per week using the following computation))~~ full-time employment for a week. For example, an instructor teaches 12 ~~((hours))~~ credits per week. 12 ~~((hours))~~ divided by 15 ~~((hours))~~ equals 80%. 35 hours times 80% equals 28 hours. The employer ~~((will))~~ should report the 28 hours to the department on the employer's quarterly tax and wage report.

~~((iii))~~ (b) Any part-time salaried instructor who does not establish a valid claim because of this formula ~~((7))~~ may provide the department with ~~((documentation))~~ evidence of hours worked ~~((which))~~ that exceeds the ~~((reported))~~ hours reported by the employer.

(8) **Severance pay.** ~~((Employers will))~~ Do not report additional hours ~~((worked))~~ for severance pay. Report only the dollar amount paid to the employee. Severance pay is ~~((reportable and))~~ taxable because it is based on past service and compensates the employee upon job separation.

(9) **Payment in kind.** ~~((The employer will))~~ Report the actual hours worked for performing services ~~((7))~~ which are compensated only by payment in kind.

(10) **Bonuses, tips and other gratuities.** ~~((An employer will))~~ Do not report additional hours for bonuses, tips or other gratuities if they are received ~~((performing))~~ by an employee who is working regular hours if bonuses, tips and gratuities are the only sources of ~~((their))~~ compensation.

(11) **Fractions of hours.** If the employee's total number of hours for the quarter results in a fraction amount, round the total ~~((figure will be rounded))~~ to the next higher whole number.

(12) **Practice, preparation, and rehearsal time.** If an employee who is part of a performing group is paid for a performance, but is also required by the employer to attend practice, preparation, and rehearsal on an organized group basis, report the hours spent in the required practice, preparation, and rehearsal as well as the performance.

NEW SECTION

WAC 192-310-080 When are performers in small performing arts industries who receive stipends not considered to be in employment? (RCW 50.04.275.)

(1) A person who is participating in a performance for an employer in subsection (2) of this section is not considered to be in employment if the person receives no remuneration other than a nominal stipend.

(2) This section only applies to employers that are classified in the North American industry classification system as theater companies, dinner theaters, dance companies, musical groups and musical artists, and museums. The employer may not employ more than three individuals during any portion of a day during a calendar year. If an organization employs no more than three individuals who regularly exceed half-time employment, it will be presumed to meet this test.

If an employer becomes ineligible during the course of a year, the employer must from that time forward until the end of the calendar year treat persons who receive only a nominal stipend as in employment.

(3) As used in this section, "participating in a performance" includes serving as an actor or actress, musician, lighting technician, costume designer, stagehand, or in performing other functions relating specifically to the performance.

(4) A stipend is nominal when it is a fixed sum of money which the employer pays periodically to defray incidental expenses involved in participating in a performance and which does not exceed the amount specified under WAC 192-100-500(5).

NEW SECTION

WAC 192-310-090 When is "casual labor" exempt from unemployment insurance? (RCW 50.04.270.) "Casual labor" that is not in the course of the employer's trade or business and does not promote or advance the employer's trade or business is not considered employment. This exemption only applies to services such as yard work or minor repair work which is performed for a private individual on nonbusiness property. Any employment which is treated as a business expense does not qualify for this exemption.

"Domestic service" is considered a separate exemption under RCW 50.05.160.

NEW SECTION

WAC 192-310-095 When are musicians and entertainers exempt from unemployment insurance? (RCW 50.04.148.) Musicians or entertainers who contract to perform specific engagements with a purchaser are not considered in employment when they provide no other duties for the purchaser and are not regularly and continuously employed by the purchaser. This exemption only applies if the primary business purpose of the purchaser is not music or entertainment. The music or entertainment provided must be incidental to the primary business activity of the purchaser. An example would be a tavern that periodically contracts with different bands to play live music.

AMENDATORY SECTION (Amending WSR 99-20-133, filed 10/6/99, effective 11/6/99)

WAC 192-310-100 (~~((Posting of notices by employers.))~~) What notices does the department require or recommend employers to post?
(Relating to RCW 50.20.140, 50.12.290, and 50.44.045.) (~~(-)~~)

(1) Employers who are responsible for unemployment insurance coverage of their employees must post and maintain printed notices to individuals who are employed by the employer. (~~((These notices inform the individual that this employer is liable for taxes under the Employment Security Act.~~

~~(i))~~ The notices provide information to individuals who may be unemployed about how to (~~((register for work, file claims for benefits, and rights to))~~) apply for benefits. The notices are to be posted in conspicuous places close to the actual location where the personal services are performed.

(2) The department will provide required notices to employers without charge. The department will send required notices to employers when they file a master application for a business license registering for unemployment insurance. The department will send updated notices to employers when there are substantive changes in the information.

(3) The department may also make recommendations of additional materials to post.

(4) A church, a convention or association of churches, or an organization which is operated primarily for religious purposes and which is operated, supervised, controlled, or principally supported by a church or a convention or association of churches shall display in a conspicuous place a poster giving notice that its employees are not considered in employment for purposes of unemployment insurance. The department shall make these posters available without charge.

NEW SECTION

WAC 192-310-150 Are corporate officers covered for unemployment insurance? (1) For purposes of WAC 192-310-150 through 192-310-190:

(a) "Bona fide officer" means any person empowered in good faith by stockholders or directors, in accordance with articles of incorporation or bylaws, to discharge the duties of a corporate officer;

(b) "Corporate officer" means an officer of a corporation as described or authorized in bylaws under RCW 23B.08.400;

(c) "Exercise substantial control in the daily management of the corporation" means that the individual makes managerial decisions over a business function or functions that have some effect on the entire corporation.

(d) "Nonpublic company" means a corporation that does not meet the definition of a public company;

(e) "Public company" means a corporation that has a class of shares registered with the Federal Securities and Exchange Commission as defined in RCW 23B.01.400;

(f) "Related by blood within the third degree" means the degree of kinship as computed according to the rules of the civil law. For example, if measured for descendants, it would include a person and that person's children, grandchildren, great grandchildren, brothers and sisters, and nephews and nieces. Alternatively, if measured for ancestors, it would include a person and that person's parents, grandparents, great grandparents, brothers and sisters, and aunts and uncles. Cousins are not related by blood within the third degree under the rules of the civil law and are not included. Legal adoptions or step-relatives are considered as if genetically related.

(g) "Related by marriage" means the union subject to legal recognition under the domestic relations laws of this state.

(2) Unless specifically exempted under WAC 192-310-160 or 192-310-180, services performed by corporate officers are considered services in employment and are covered for purposes of unemployment insurance to the same extent other employment is covered.

NEW SECTION

WAC 192-310-160 How may corporations exempt corporate officers from unemployment insurance coverage? (1) Subject to RCW 50.04.165 and the other requirements of this section, a corporation may exempt one or more corporate officers from coverage by notifying the department on a form approved by the department. The form must be signed by each exempted officer. Unless the corporate officer exempted is the only officer of the corporation, the form must also be signed by another corporate officer verifying the

decision to be exempt from coverage.

(2) The election to exempt corporate officers is effective immediately if made when the corporation first registers with the department as an employer under RCW 50.12.070. If the election to exempt corporate officers is made after that, the exemption is effective on January 1 of the following calendar year. The corporation must send written notice to the department by January 15 for the exemption to be effective on January 1 of that year. The exemption is not effective until filed with the department and will not be applied retroactively, except for the period from January 1 to January 15 if the notice is sent by January 15. A corporation is not eligible for refund or credit for periods before the effective date of the exemption.

(3) A public company as defined in RCW 23B.01.400 may exempt any bona fide corporate officer:

(a) Who is voluntarily elected or voluntarily appointed under the articles of incorporation or bylaws of the corporation;

(b) Who is a shareholder of the corporation;

(c) Who exercises substantial control in the daily management of the corporation; and

(d) Whose primary responsibilities do not include the performance of manual labor.

(4) A corporation that is not a public company may exempt eight or fewer bona fide corporate officers who voluntarily agree to be exempted from coverage and sign a form approved by the department verifying this. These corporate officers must be voluntarily elected or voluntarily appointed under the articles of incorporation or bylaws of the corporation and must exercise substantial control in the daily management of the corporation.

(5) A corporation that is not a public company may exempt any number of corporate officers if all officers of the corporation are related by blood within the third degree or by marriage to a person related by blood within the third degree. If any of the corporate officers fail to qualify for this exemption because they are not related by blood or marriage as required, then none of the corporate officers may qualify under this subsection, although they may still qualify under subsection (4) of this section. This is an alternative and not an addition to exemptions under subsection (4) of this section.

For example, a husband and wife, their biological or adopted children or stepchildren, grandchildren, and great grandchildren, their brothers and sisters, their nephews and nieces, and the spouses of any of these people could qualify for exemption as corporate officers under this section without being limited to eight individuals. However, if any of the corporate officers do not meet this test, then this subsection does not apply.

(6) This section does not apply to officers of a corporation covered by chapter 50.44 RCW (some nonprofit or government organizations) or chapter 50.50 RCW (Indian tribes).

NEW SECTION

WAC 192-310-170 How is unemployment insurance coverage of corporate officers reinstated? (1) Unemployment insurance coverage of corporate officers who have been exempted from coverage may be reinstated under subsection (2) of this section by termination of an exemption or under subsection (3) of this section by election of the corporation.

(2)(a) An exemption for a corporate officer of a public corporation who has been exempted from unemployment insurance coverage under WAC 192-310-160(3) terminates immediately if the officer no longer qualifies for the exemption. For example, the worker may no longer be a bona fide elected or appointed corporate officer, may no longer be a shareholder of the corporation, may no longer exercise substantial control in the daily management of the corporation, or now has primary responsibilities which include the performance of manual labor.

(b) An exemption for a corporate officer of a nonpublic corporation who has been exempted from unemployment insurance coverage under WAC 192-310-160(4) terminates immediately if the officer no longer qualifies for the exemption for reasons other than revocation of a voluntary agreement to be exempted from coverage. For example, the worker may no longer be a bona fide elected or appointed corporate officer or may no longer exercise substantial control in the daily management of the corporation. However, the exemption does not terminate solely because the officer withdraws a voluntary agreement to be exempted from coverage.

(c) An exemption for a corporate officer of a nonpublic corporation who has been exempted from unemployment insurance coverage under WAC 192-310-160(5) terminates immediately if the officer no longer qualifies for the exemption because of a change in family relationship, such as a change in marital status. The exemption for all other corporate officers also terminates immediately if the entire group of corporate officers no longer qualifies under WAC 192-310-160(5), except to the extent some or all may remain exempt under WAC 192-310-160(4).

(d) A corporation must notify the department on a form approved by the department of a change in status in which an exemption terminates for a corporate officer who had been exempted. The notice is due by the time the next quarterly tax and wage report is due from the corporation. In addition, a corporate officer may notify the department that the exemption has terminated.

(e) A corporation is responsible for any taxes, penalties, and interest due if an exemption terminates and coverage is reinstated, regardless of whether the corporation provided notice to the department of the termination of the exemption.

(3) A corporation that has exempted one or more corporate officers may elect to reinstate coverage for one or more of those previously exempted corporate officers only under the following conditions:

(a) The window of opportunity to reinstate coverage only exists every five years, beginning in 2014. Corporations may reinstate coverage in calendar years 2014, 2019, and every five years thereafter.

(b) Reinstatement is only effective on January 1, 2014, January 1, 2019, and every five years thereafter. The corporation must send written notice to the department by January 15 for the reinstatement to be effective on January 1 of that year. If written notice is sent after January 15, reinstatement will not be allowed until the next window of opportunity five years thereafter. Reinstatement will not be applied retroactively, except for the period from January 1 to January 15 if notice is sent by January 15.

(c) Coverage will not be reinstated if the corporation committed fraud related to the payment of contributions within the previous five years, is delinquent in the payment of taxes at the time of the request to reinstate corporate officers, is currently assigned a tax rate for employers who are delinquent on taxes under WAC 192-320-035, or if the commissioner exercises his or her discretion to determine that there are related reasons why the corporation should not be allowed to reinstate coverage of corporate officers.

NEW SECTION

WAC 192-310-180 Are corporate officers covered for unemployment insurance when the corporation has no other employees?

(1) If a corporation has no employees and all personal services are performed only by bona fide corporate officers, the corporation is not considered an "employer" or "employing unit" under RCW 50.04.080 and 50.04.090. Services of these corporate officers are not considered "services in employment" under RCW 50.04.165 or WAC 192-310-150 and are not covered for purposes of unemployment insurance unless they specifically elect coverage under subsection (2) of this section.

(2) A corporation that has no employees and in which all personal services are performed only by bona fide corporate officers may elect unemployment insurance coverage if it registers with the department under RCW 50.12.070, elects coverage under RCW 50.24.160, and complies with WAC 192-300-170. The election must cover at least two calendar years and is only effective upon the written approval of the commissioner. Once the election for coverage is approved, it may only be terminated effective January 1 after at least two calendar years and only if the corporation filed a written application for termination of coverage by January 15 of that year.

(3) This section does not apply to officers of a corporation covered by chapter 50.44 RCW (some nonprofit or government

organizations) or chapter 50.50 RCW (Indian tribes).

NEW SECTION

WAC 192-310-190 When is a corporate officer with ten percent ownership considered unemployed? (1) This section applies to:

(a) A corporate officer who owns ten percent or more of the outstanding stock of the corporation; or

(b) A corporate officer who is a family member of another corporate officer who owns ten percent or more of the outstanding stock of the corporation. For purposes of this section, a "family member" is a person related by blood or marriage as parent, stepparent, grandparent, spouse, child, brother, sister, stepchild, adopted child, or grandchild.

(2) A corporate officer whose claim for benefits is based on any wages with that corporation is not considered unemployed in any week during the individual's term of office, even if wages are not being paid at the time. The corporate officer is considered unemployed and potentially eligible for benefits if the corporation dissolves or if the officer permanently resigns or is permanently removed as a corporate officer under the articles of incorporation or bylaws.

(3) For purposes of this section, "permanently" means for a period of indefinite duration, but expected to extend at least through the claimant's benefit year end date. If at any time during the benefit year the claimant resumes his or her position as an officer with the corporation, all benefits paid during that benefit year will be considered an overpayment and the claimant will be liable for repayment.

(4) A corporation must provide notice to the department in a format approved by the department when the ownership of the percentage of stock increases to become ten percent or more or decreases to become less than ten percent. The notice is due by the time the next quarterly tax and wage report is due from the corporation.

AMENDATORY SECTION (Amending WSR 05-19-017, filed 9/9/05, effective 10/10/05)

WAC 192-320-020 How is the industry average calculated for rate years 2005, 2006, and 2007? ((--)) (RCW 50.29.025.) (1) As used in this title:

(a) "NAICS" is an abbreviation for North American Industry Classification System;

(b) "Industry average array calculation factor rate" means the average experience-based tax rate for a particular industry. It will be referred to as the "experience tax."

(c) "Industry average graduated social cost factor rate" is the average social tax rate for a particular industry. It will be referred to as the "social tax."

(2) When calculating the experience tax and social tax, the department will use the first four digits of the NAICS code of the industry being calculated.

(3) Experience tax.

(a) The department will calculate the experience tax as follows:

(i) A table will be prepared that contains each of the 40 rate classes;

(ii) For each rate class, we will multiply, total, and display the taxable payrolls for all qualified employers assigned to that rate class with the NAICS code being calculated, by the percentage assigned to that rate class;

(iii) We will total the tax rates for the 40 industry rate classes and divide the sum by the total of all payrolls used in the calculation; and

(iv) We will add fifteen percent to the result, and show the final amount as a percentage rounded to two decimal places.

(b) The experience tax must be at least 1.00 percent and not more than 5.4 percent.

(4) Social tax.

(a) The department will calculate the social tax as follows:

(i) The experience tax table will show the percentage of the social tax assigned to each of the 40 rate classes;

(ii) We will multiply, total, and display the total payroll in each industry rate class by the percentage of social tax assigned to that rate class;

(iii) We will total the social tax rate for the 40 industry rate classes and divide the sum by the total of all payrolls used in the calculation; and

(iv) We will add fifteen percent to the result, and show the final amount as a percentage rounded to two decimal places.

(b) The social tax for an industry cannot be higher than the percentage of social tax assigned to rate class 40.

(5) If there are no qualified employers in the four digit level of the NAICS code, we will calculate the rates using the corresponding three digit level and assign the result to the four digit level. If there are no qualified employers in the three digit level, we will calculate the rates using the corresponding two digit level and assign the result to both the three and four digit levels.

(6) This section applies to rate years 2005, 2006, and 2007.

NEW SECTION

WAC 192-320-025 How are unemployment insurance tax rates determined for new employers? (RCW 50.29.025.) (1) Beginning in rate year 2008, unemployment insurance tax rates for new employers shall be based on the history factor of new employers over the last three fiscal years applied to the experience tax and the social cost factor tax for each industry. The history factor shall be ninety percent, one hundred percent, or one hundred fifteen percent, based on the experience of new employers over the last three years, and shall be calculated under RCW 50.29.025.

(2) As used in this section:

(a) "NAICS" is an abbreviation for North American Industry Classification System;

(b) "Industry average array calculation factor rate" means the average experience-based tax rate for a particular industry. When multiplied by the history factor, it will be referred to as the "experience tax."

(c) "Industry average social cost factor rate" means the average social tax rate for a particular industry. When multiplied by the history factor, it will be referred to as the "social cost factor tax."

(d) "History factor" shall be ninety percent, one hundred percent, or one hundred fifteen percent, depending on the ratio of benefits charged and contributions paid in the last three fiscal years by employers who were not considered a "qualified employer" under WAC 192-320-030 or were not delinquent on taxes under WAC 192-320-035. It shall be computed annually and is not limited to a particular industry.

(3) When calculating the experience tax and social cost factor tax, the department will use the first four digits of the NAICS code of the industry being calculated.

(4) Experience tax.

(a) The department will calculate the experience tax as follows:

(i) A table will be prepared that contains each of the 40 rate classes;

(ii) For each rate class, the department will multiply, total, and display the taxable payrolls for all qualified employers

assigned to that rate class with the NAICS code being calculated, by the percentage assigned to that rate class;

(iii) The department will total the tax rates for the 40 industry rate classes and divide the sum by the total of all payrolls used in the calculation; and

(iv) The department will multiply the result by the history factor for that year, and show the final amount as a percentage rounded to two decimal places.

(b) The experience tax must be at least 1.00 percent and not more than 5.4 percent.

(5) Social cost factor tax.

(a) The department will calculate the social cost factor tax as follows:

(i) The experience tax table will show the percentage of the social cost factor tax assigned to each of the 40 rate classes;

(ii) The department will multiply, total, and display the total payroll in each industry rate class by the percentage of social cost factor tax assigned to that rate class;

(iii) The department will total the social cost factor tax rate for the 40 industry rate classes and divide the sum by the total of all payrolls used in the calculation; and

(iv) The department will multiply the result by the history factor for that year, and show the final amount as a percentage rounded to two decimal places.

(b) The social cost factor tax for an industry cannot be higher than the percentage of social cost factor tax assigned to rate class 40.

(6) If there are no qualified employers in the four-digit level of the NAICS code, the department will calculate the rates using the corresponding three-digit level and assign the result to the four-digit level. If there are no qualified employers in the three-digit level, the department will calculate the rates using the corresponding two-digit level and assign the result to both the three-digit and four-digit levels.

NEW SECTION

WAC 192-320-030 How are unemployment insurance tax rates determined for a current "qualified employer"?

(1) A "qualified employer" means an employer who:

(a) Reported some employment in the twelve-month period beginning with April 1 of the second year preceding the computation date;

(b) Had no period of four or more consecutive calendar quarters for which he or she reported no employment in the two calendar years immediately preceding the July 1 computation date; and

(c) Was not delinquent on taxes under WAC 192-320-035.

(2) Unemployment insurance tax rates for a "qualified employer" are determined under RCW 50.29.025.

NEW SECTION

WAC 192-320-035 How are unemployment insurance tax rates determined for employers who are delinquent on taxes? (1) An employer that has not submitted by September 30 all reports, taxes, interest, and penalties required under Title 50 RCW for the period preceding July 1 of any year is not a "qualified employer."

(2) For purposes of this section, the department will disregard unpaid taxes, interest, and penalties if they constitute less than either one hundred dollars or one-half of one percent of the employer's total tax reported for the twelve-month period immediately preceding July 1.

(3) This section does not apply to services under RCW 50.04.160 performed in domestic service in a private home, local college club, or local chapter of a college fraternity or sorority if the otherwise qualified domestic employer shows to the satisfaction of the commissioner that he or she acted in good faith and that application of the rate for delinquent taxes would be inequitable.

(4) The department shall provide notice to the employer that he or she may be subject to the higher rate for delinquent taxes if the employer does not comply with this section. Notice may be in the form of an insert in July, August, or September billing statements or in a notice of assessment. Evidence of the routine practice of the department in mailing notice in billing statements or in a notice of assessment shall be sufficient to establish that the department provided this notice.

(5) An employer that is not a "qualified employer" because of failure to pay contributions when due shall be assigned an array calculation factor rate two-tenths higher than that in rate class 40, unless the department approves a deferred payment contract with the employer by September 30 of the previous rate year. If an employer with an approved deferred payment contract fails to make any one of the payments or fails to submit any tax report and payment in a timely manner, the employer's tax rate shall immediately revert to an array calculation factor rate two-tenths higher than in rate class 40.

(6) An employer that is not a "qualified employer" because of failure to pay contributions when due shall be assigned a social cost factor rate in rate class 40.

(7) Assignment of the rate for delinquent taxes is not considered a penalty which is subject to waiver under WAC 192-310-030.

NEW SECTION

WAC 192-320-040 When will the department recalculate employer tax rates? (RCW 50.29.080.) (1) The department may, at its discretion, recalculate the tax rate for any employer if it determines, within three years of the July 1 computation date, that the rate as originally computed was erroneous.

(2) Except as provided in subsection (1) of this section, an employer must submit a written request for rate review or recalculation before the department will recalculate a rate. This does not apply if the department determines that the department's error caused an incorrect tax rate.

(3) The department will not recalculate a tax rate at the request of the employer more than once in a calendar year.

AMENDATORY SECTION (Amending WSR 04-23-058, filed 11/15/04, effective 12/16/04)

WAC 192-320-070 Conditions for relief of benefit charges due to a voluntary quit. (1) ~~((For claims with an effective date prior to January 4, 2004, a contribution-paying nonlocal government base year employer, who has not been granted relief of charges under RCW 50.29.020(3) may request relief of charges for a voluntary quit not attributable to the employer under RCW 50.29.020(4) and WAC 192-320-065.~~

~~(2) For claims with an effective date on or after January 4, 2004,))~~ A contribution-paying nonlocal government base year employer, who has not been granted relief of charges under RCW 50.29.021(3), may request relief of charges for a voluntary quit not attributable to the employer under RCW 50.29.021(4) and WAC 192-320-065.

~~((3))~~ **(2) Reasons for a voluntary quit not attributable to the employer.** A claimant may have been denied unemployment benefits for voluntarily quitting work without good cause, but subsequently requalify for unemployment benefits through work and earnings. Even if the claimant has requalified for benefits, the following reasons for leaving work will be considered reasons not attributable to the employer:

(a) The claimant's illness or disability or the illness, disability or death of a member(s) of the claimant's immediate family;

(b) The claimant's domestic responsibilities;

(c) Accepting a job with another employer;

(d) Relocating for a spouse's employment;

(e) Starting or resuming school or training;

(f) Being in jail;

(g) The distance to the job site when the job was accepted and the distance at the time of the quit remained the same ~~((7))~~; or the

job location may have changed((7)) but the distance traveled or difficulty of travel was not increased;

(h) Being dissatisfied with wages, hours or other working conditions generally known when the job was accepted; and the working conditions are determined suitable for the occupation in the claimant's labor market; and

(i) Domestic violence which causes the claimant reasonably to believe that continued employment would jeopardize the safety of the claimant or any member of the claimant's immediate family.

((+4+)) (3) Reasons for a voluntary quit considered attributable to employer are those work-related factors of such a compelling nature as to cause a reasonably prudent person to leave employment. The work factors must have been reported to the employer if the employer has reasons not to be aware of the conditions, and the employer failed to improve the factors within a reasonable period of time. The reason for quitting may or may not have been determined good cause for voluntarily leaving work under RCW 50.20.050. For benefit charging purposes, however, such work-related factors may include, but are not limited to:

(a) Change in work location which causes an increase in distance and/or difficulty of travel, but only if it is clearly greater than is customary for workers in the individual's classification and labor market;

(b) Deterioration of work site safety provided the employee has reported such safety deterioration to the employer((7)) and the employer has failed to correct the hazards within a reasonable period of time;

(c) Employee skills no longer required for the job;

(d) Unreasonable hardship on the health or morals of the employee;

(e) Reductions in hours;

(f) Reduction in pay;

(g) Notification of impending layoff; and

(h) ((Such)) Other work-related factors ((as)) the commissioner ((may deem)) considers pertinent.

AMENDATORY SECTION (Amending WSR 00-05-066, filed 2/15/00, effective 3/17/00)

WAC 192-330-100 Adjustments and refunds--Reduction of refund if wages reported in error--RCW 50.24.150. (1) An employer may file a written request for refund of, or adjustment to, ~~((contributions))~~ incorrectly paid taxes, interest, or penalties within three years of the date they were paid. The commissioner may also make ~~((refunds or))~~ adjustments for incorrectly paid taxes, interest, or penalties within three years of the date they were paid using his/her own initiative.

(2) When the wages of an employee have been reported in error and the department has paid a claimant benefits based on those wages, any request for refund of the tax will be offset by the amount of benefits paid. If there is any refund of taxes due the employer, it will be reduced by the amount of benefits paid against the claim(s) and any associated wages.

(3) Refunds will not usually be issued to an ongoing, active business when the credit can be applied to subsequent quarterly reports. Refunds will be allowed for:

- (a) Accounts that are no longer active;
- (b) Duplicate payments of one thousand dollars or more;
- (c) Cases where the business can prove financial hardship from lack of a refund;
- (d) The incorrect payment is due to agency error; or
- (e) Other incorrect payments of one hundred dollars or more, at the discretion of the department.

AMENDATORY SECTION (Amending WSR 00-05-065, filed 2/15/00, effective 3/17/00)

WAC 192-340-010 Field audit expansion. The department's audit expansion requirements are as follows:

(1) If underreported or overreported wages for employees ~~((originally reported and/or new workers))~~ are discovered ~~((in the audit year))~~ for the year being audited, the department may expand ~~((to subsequent year(s). Subsequent year(s) and/or quarter(s) means))~~ the audit to prior years within the limits of RCW 50.24.190 and to subsequent years up to the most recently completed calendar quarters where the tax and wages are reported.

(2) ~~((When the department feels there are facts that indicate that the employer has made a conscious effort to avoid taxation, the audit period may be expanded within statutory limitations.~~

~~(3))~~ In the post-audit interview, it is the responsibility of the department to ensure that audit findings or exceptions are discussed and future reporting requirements are understood by the ~~((entity))~~ business being audited.

NEW SECTION

WAC 192-340-020 How may auditors determine payroll and wage information which the employer fails to provide? If an employer fails or refuses to provide necessary payroll or other wage information during an audit, the department may use RCW 50.12.080 to determine payroll and wage information based on information otherwise available to the department. This may include information from labor market and economic analysis, information provided to other state or local agencies, and the best information otherwise available to the department.

